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December 8, 1964

REQUESTED BY: NORMAN E. GREEN
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State of Arizona

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTIONS: 1. Is a private process server covered under A.R.S. 11-441(B) and A.R.S. 13-1202?

2. What is the remedy of a private process server where service of process is obstructed?

ANSWERS: 1. No.

2. See body of opinion.

A.R.S. 11-441(B) provides: "The Sheriff may in the execution of the duties prescribed in paragraphs 1 to 4, inclusive, Subsection A, command the aid of as many male inhabitants of the county as he deems necessary."

It should be noted that the power to command aid, as set forth above, is restricted to paragraphs 1 to 4, inclusive, Subsection A. Service of process is not included in paragraphs 1 to 4 inclusive but is found in paragraph 7. Therefore, neither a sheriff nor private process server may command aid to serve process under A.R.S. 11-441(B).

A.R.S. 13-1202(A) provides: "When a sheriff or other public officer authorized to execute process finds, or has reason to believe that resistance will be made to execution of the process, he may command as many male inhabitants of his county as he deems proper to assist him in overcoming the persons resisting and their aiders and abettors." (Emphasis supplied.)

A.R.S. 13-1202(B) provides:

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"The officer shall certify to the court from which the process issued the names of the persons resisting, and their aiders and abettors, and they may be proceeded against for contempt of court."

Under A.R.S. 13-1202(A) such a process server must be either a sheriff "or other public official."

By definition A.R.S. 38-101(3) and case law, it would appear that a private process server is not included in the generally understood definition of "public officer." In 1926 the Arizona Supreme Court made a definite distinction between a public officer and an employee in citing Bowden v. Cumberland County, 123 Me 359, 123 Atl. 166, and Sanders v. Belue, 78 S.C. 171, 58 S.E. 762.

In interpreting the above cases, it appears that these cases can be applied in distinguishing between an "officer of the court" (A.R.S. 11-445 F) and a "public officer."

This opinion is not meant to imply that a private process server is without a remedy. A.R.S. 12-864 in providing for punishment of contempt of court states, "Contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice, and contempts committed by failure to obey a lawful writ, process, order, judgment of the court, and all other contempts not specifically embraced within this article may be punished in conformity to the practice and usage of the common law." (Emphasis supplied.)

The common law in this area of the law is as follows:

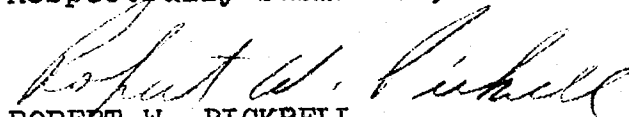
"It is contempt to employ a subterfuge to obstruct, or attempt to obstruct, the service of legal process. Courts have said that the intentional hindrance of service of process constitutes contempt, regardless of the particular means by which such hindrance is accomplished, and that a contempt is committed if a person hinders or prevents service

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of process by deceiving the officer or circumventing him by any means, even though there is no force or intimidation or direct refusal to obey the process." (17 Am.Jur. 2d_____.)

The set of facts surrounding this question would appear to indicate a contempt of court by the persons obstructing the service of process. The remedy therefore would be through a contempt action and not by authority of the statutes cited in the question.

Respectfully submitted,



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The Attorney General

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